

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTER DISTRICT OF TEXAS
EL PASO DIVISION**

NOE DE JESUS ORTIZ VILLAGRAN,
Plaintiff,

v.

COUNTY OF EL PASO, TEXAS,
and the UNITED STATES OF AMERICA,
Defendants.

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EP-19-CV-00336-DCG-ATB

PARTIES' JOINT RESPONSE TO ORDER TO SHOW CAUSE

COME NOW, Plaintiff Noe De Jesus Ortiz Villagran, Defendant County of El Paso, and Defendant United States of America, (hereinafter referred to as the "Parties") by and through their undersigned counsel, pursuant to the Court's December 7, 2021 Order Relating to Entry of Judgment (ECF No. 95), and file this Parties' Response to Order to Show Cause, and in support thereof would respectfully show the Court the following:

1. The Parties conducted mediation on October 19, 2021. ECF No. 94. The Parties continued negotiations through November 5, 2021, at which time they reached agreement on the terms of settlement and notified the Court of the outcome of their negotiations. *Id.*
2. This Court's Scheduling Order of December 14, 2020 directs the Parties to promptly file written notice with the Court apprising of settlement and advising the Court if they needed additional time to file dismissal papers. ECF No. 40, p. 4.
3. On the December 7, 2021 this Court entered its Order Relating to Entry of Judgment, wherein the Court ordered the Parties to Show Cause as to why they have not yet filed dismissal papers. ECF No. 95, p. 1.

4. At the time settlement was reached on November 5, 2021, the Parties did not anticipate a delay beyond thirty days to finalize settlement and dismissal papers. The extended period of time to finalize settlement and dismiss the case was unexpected.

5. Plaintiff is entering separate settlements with each defendant. Accordingly, the Parties timely exchanged their respective draft settlement documents.

a. El Paso County

After extensive negotiations over the terms of the final settlement agreement, Plaintiff has executed his agreement with the County. Due to the County's schedule, Plaintiff will not be able to obtain an executed copy of the County's agreement (and settlement proceeds) until after the next El Paso County Commissioner's Court meeting which is scheduled to take place on December 13, 2021.

b. United States of America

The United States has standard pre-approved settlement language in cases filed pursuant to the Federal Tort Claims Act. Due to unique circumstance with the instant case, Plaintiff and the United States have conferred on modifications to the language of the pre-approved settlement agreement. Counsel for the United States has submitted the proposed language to the Department of Justice for review. Counsel for the United States anticipates receiving a response by no later than December 31, 2021.

Assuming approval is authorized, Plaintiff's counsel will need to review the entire agreement in Spanish with Plaintiff and coordinate execution of the settlement agreement. Plaintiff lives out of town with limited access to office appliances so this may take some time. Upon receipt of a fully executed agreement, settlement consideration can be delivered.

6. Contemporaneous with the instant Joint Response, the Parties are seeking an extension of time until January 21, 2022 to submit dismissal documents and ensure exchange of consideration. Further, and in accordance with the Court's Scheduling Order, the Parties are moving to vacate their January 31, 2022 trial setting. *See* ECF No. 40, p. 4.

7. The Parties have acted diligently in attempting to finalize dismissal papers. Unexpected delays have arisen due to unique circumstance with this case. The Parties therefore respectfully pray that the Court grant the Parties additional time and enter a new deadline date for submission of closing papers – as set forth in the accompanying Motion for Extension. The parties also respectfully apologize for the failure to inform the Court of these unexpected delays in a timely fashion.

Respectfully submitted,

ASHLEY C. HOFF
UNITED STATES ATTORNEY

Date: December 10, 2021

/s/ Manuel Romero
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Date: December 10, 2021

/s/ Ruben Duarte (by permission)

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2021, I filed the foregoing with the Clerk of Court pursuant to the electronic filing procedures of the United States District Court for the Western District of Texas using the CM-ECF system.

/s/ Manuel Romero
MANUEL ROMERO